

URBAN E. CACHELIN

IBLA 94-43 Decided July 31, 1996

Appeal from a decision of the Glennallen, Alaska, District Office, Bureau of Land Management, rejecting right-of-way application AA-62554.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Rights-of-Way--Rights-of-Way: Applications--Rights-of-Way: Appraisals--Rights-of-Way: Federal Land Policy and Management Act of 1976

BLM properly rejected a road right-of-way application after the applicant refused to pay advance rental.

APPEARANCES: Urban E. Cachelin, Slana, Alaska, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Urban E. Cachelin has appealed from a September 15, 1993, decision of the Glennallen, Alaska, District Office, Bureau of Land Management (BLM), rejecting right-of-way application AA-62554. The application, which was filed on September 25, 1987, was made for an existing access road in the South Slana settlement area, E $\frac{1}{2}$ of sec. 35 and SE $\frac{1}{4}$ of sec. 26, T. 11 N., R. 8 E., Copper River Meridian, described by BLM as 60 feet wide, 7,290 feet long and containing about 10.91 acres. Additional information relevant to the application was requested by BLM and submitted by Cachelin on June 29, 1992. After completing an appraisal, BLM issued a decision on August 2, 1993, transmitting copies of a right-of-way grant for Cachelin's signature and instructing him to submit the signed documents, monitoring fees, and advance rental within 30 days. The decision was received by Cachelin on August 6, 1993. He responded in a letter filed with BLM on September 13, 1993, that rejected the offered right-of-way, refused to pay rental, asked BLM to suspend his application, provide an accounting, and grant him permanent access without further charge. BLM then issued the September 15 decision rejecting the right-of-way application because Cachelin had refused the offered grant. A timely appeal was filed.

Before this Board, Cachelin denies that his right-of-way application should have been rejected and argues that his requests for more time and information concerning required payments were ignored by BLM without reason. He states that he has maintained the access road and is doing his best to comply with legal requirements but that he is "drowned in paper work and confused by recently passed government regulations" that were not in effect when his application was first made.

The record shows that the August 2, 1993, decision was received by Cachelin on August 6, 1993. A response was therefore due on September 7, 1993, but was not filed with BLM until September 13, 1993. Under 43 CFR 1821.2-2(g), however, a late filing may be waived by BLM, provided there is no legal impediment to doing so, and if no other claim has intervened in the meantime. This rule was apparently followed in this case, inasmuch as Cachelin's application was not rejected because it was untimely (as Cachelin suggests), but because he refused to accept the terms of the right-of-way grant offered to him.

Cachelin argues that his response to the BLM offer was confused by legal requirements that changed after he applied for a right-of-way; the record, however, does not support this contention. The lands for which he applied were not opened to entry until September 1983 (see Appraisal Report AA-62554, at 5), and his right-of-way application made to BLM in 1987. The basic law under which his application was made, sections 501 and 504 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1761 and 1764 (1994), was enacted on October 21, 1976; regulations implementing FLPMA provisions and authorizing rights-of-way management by BLM were approved in 1980. See 45 FR 39418 (June 10, 1980); 45 FR 44526 (July 1, 1980). Under these rules, a right-of-way applicant is required to reimburse the United States for reasonable administrative costs incurred in processing an application and for monitoring construction and operation of a right-of-way. 43 U.S.C. § 1764(g) (1994); 43 CFR 2808.1; Joe B. Kearl, 119 IBLA 122, 123 (1991). The holder of a right-of-way grant is also required to pay the United States in advance for the fair market value of a right-of-way. 43 U.S.C. § 1764(g) (1994); 43 CFR 2803.1-2(a); Diablo Communications, 128 IBLA 377, 380 (1994). It does not appear, therefore, that Departmental rules governing rights-of-way across public lands have materially changed since Cachelin made his application.

The case record shows that he paid a \$50 application fee and a \$250 processing fee, and that BLM required a \$75 monitoring fee and \$180 annual rental prior to issuance of the right-of-way. Using a schedule provided for such cases by Departmental regulations at 43 CFR 2808.2-1, BLM determined that Cachelin's application fell into Category II; the application/processing fee thereunder was found to be \$300 and the monitoring fee \$75. See 43 CFR 2808.2-1(a), 2808.3-1(a), 2808.4(a). The annual rental amount was arrived at by a staff appraisal that was used to determine fair market rental value for the road right-of-way. Cachelin has

not shown that any of the costs charged were incorrect, nor has he alleged error in BLM's computations of value; it is therefore concluded that BLM properly computed total reimbursable costs and rental for this road right-of-way application. Cachelin has not, therefore, shown how BLM's decision was in error. He applied for a right-of-way grant in 1987, and, when the grant documents were offered to him to be executed within a specified period of time, he chose to refuse the grant. Under such circumstances, BLM properly rejected his right-of-way application. Diablo Communications, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Amess
Administrative Judge

I concur.

James L. Bymes
Chief Administrative Judge

